

EXHIBIT B

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Deposition Transcript

Case Number: 3:22-cv-07465-CRB

Date: January 9, 2025

In the matter of:

TORRES, et al., v PRUDENTIAL FINANCIAL, INC., et al.

Nathaniel Polish, Ph.D.

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**CERTIFIED
COPY**

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1 BY MS. GLIOZZO:

2 Q. Are you offering the opinion that the only way
3 ActiveProspect would be capable of using the
4 user-submitted data would be if they created the ability
5 to locate a certificate for a particular session in the
6 way that you describe would be extraordinarily difficult
7 to accomplish?

8 MS. DAVIS FISHER: Objection. Misstates
9 Dr. Polish's declaration and misstates his prior
10 testimony.

11 THE WITNESS: What I've said is that locate --
12 in this section anyway, what I'm saying is that locating
13 a particular certificate for a particular session without
14 the associated URL would be extraordinarily difficult.
15 They would have to create new software, new capability,
16 and that would be extraordinarily difficult, if not
17 practically impossible. That's what I'm saying.

18 BY MS. GLIOZZO:

19 Q. Is there anything other than that that
20 ActiveProspect could do that would be developing a
21 technological capability to use the data in some other
22 way than providing the service?

23 MS. DAVIS FISHER: Objection. Vague. And calls
24 for speculation.

25 THE WITNESS: I mean what usage are you -- it

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1 sounds like in your question you're saying that they
2 might have a use besides locating a particular
3 certificate. That sounds very speculative to me as to
4 what you're asking, so maybe you could narrow it a little
5 bit.

6 BY MS. GLIOZZO:

7 Q. What I'm trying to understand is you say they're
8 not currently capable, and then when I'm asking you
9 questions about developing the capability to use, the
10 responses you've offered me are specific to developing
11 the technology to locate a particular certificate for a
12 particular session. What I'm trying to understand is are
13 you saying that that is a necessary first step for any
14 use, that you be able to locate a particular session and
15 a particular URL?

16 MS. DAVIS FISHER: Objection. That misstates
17 Dr. Polish's prior testimony and misstates his expert
18 declaration. And it's vague.

19 THE WITNESS: Yeah, my understanding from
20 looking at the system and looking at testimony and
21 documentation is that the system is built to provide a
22 particular way to access this information, these events,
23 and that they've gone to great lengths to make sure that
24 there's no really other way to do it. I can't really
25 speculate about future events.

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1 I did try to explore a little bit a few
2 particular examples like being able to locate a
3 particular certificate without the URL. But beyond that,
4 it's all just rank speculation.

5 BY MS. GLIOZZO:

6 Q. That's helpful. Thank you.

7 So I'm going to pull your report back up again.

8 Looking at opinion 1, your first opinion, I want
9 to ask about some things that we maybe agree on.

10 Do you agree with me that on the webform during
11 the class period ActiveProspect did collect
12 user-submitted data through the TrustedForm software?

13 MS. DAVIS FISHER: Objection. Calls for a legal
14 conclusion and vague. And assumes facts not in evidence.

15 THE WITNESS: So I -- as a first matter, I don't
16 agree, and what I'll say is that TrustedForm software is
17 collecting user event information, batching it, and
18 sending it to TrustedForm servers. It's not trying to
19 interpret any of the data, any of the events, it's not
20 trying to extract information. It's just providing event
21 information for key presses and mouse movements and the
22 like and sending those to the TrustedForm servers.

23 BY MS. GLIOZZO:

24 Q. And how is that data different than
25 user-submitted data?

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1 MS. DAVIS FISHER: Objection. Vague and assumes
2 facts not in evidence.

3 THE WITNESS: So user -- when the user submits
4 data, they're typing something into a form and sending it
5 to, say, Assurance IQ or Prudential. That is not what's
6 being sent to TrustedForm. TrustedForm is getting event
7 information, and it's getting it in a form that's --
8 that's batched and compressed and encrypted, and none of
9 that's accessible on TrustedForm's servers certainly
10 until -- nothing happens with it until the session's done
11 and somebody makes a request for that certificate.

12 So what the -- how the user interacts with the
13 site, the events, that's sent to TrustedForm. The data
14 that the user is sending as part of a webform to the
15 website owner is a different matter and is not sent to
16 TrustedForm.

17 BY MS. GLIOZZO:

18 Q. All of the information that a class member typed
19 on the webform during the class period was keystroke by
20 keystroke sent to ActiveProspect's servers through
21 operation of the TrustedForm software. That's true,
22 isn't it?

23 MS. DAVIS FISHER: Objection. Vague and assumes
24 facts not in evidence. And asked and answered.

25 THE WITNESS: Yeah, I mean keystrokes and mouse

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1 movements are -- are sent, and that's what's stored at
2 the ActiveProspect's TrustedForm server.

3 In order to -- in order to understand that, they
4 would have to do something that they don't do. They
5 don't analyze them, they don't do anything further with
6 it to get data from it.

7 So for example, if a user was typing something
8 into a form and then hit backspace a few times and then
9 collected themselves, all of those keyboard actions were
10 being -- all of those events were being sent to
11 TrustedForm. What the website owner gets is the
12 completed field. So they're getting different things,
13 and it would require different capabilities on
14 TrustedForm's side to see that as user data.

15 Q. I feel you're going to opinion 2 but I'm only on
16 opinion 1 right now, and my question wasn't about
17 understanding it or reading it. It was simply about
18 collecting it. So I'm going to ask it again.

19 A. Okay.

20 Q. Isn't it true that on the webform during the
21 class period ActiveProspect did collect user-submitted
22 data through the TrustedForm software?

23 MS. DAVIS FISHER: Objection. Calls for legal
24 conclusion. Vague. Assumes facts not in evidence and
25 asked and answered.

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1 You may answer, Dr. Polish.

2 THE WITNESS: Yeah. No, they're not collecting
3 user data. They're collecting -- they're collecting user
4 interaction events. Those are different things. They're
5 not collecting the user data.

6 BY MS. GLIOZZO:

7 Q. Do we agree that using data collected from the
8 webform during the class period through the TrustedForm
9 software, that ActiveProspect does use that data to
10 provide the TrustedForm service to Prudential and
11 Assurance? Do we agree on that?

12 MS. DAVIS FISHER: Objection. Vague and assumes
13 facts not in evidence. And outside the scope of
14 Dr. Polish's expert declaration.

15 THE WITNESS: So TrustedForm collects user
16 events, user interaction -- user website interaction
17 events, and it uses those collected events to create a
18 certificate which is then used for playback if it's been
19 claimed and can be provided to the website owner. It's
20 not using user data, it's using user interaction events
21 to do that.

22 BY MS. GLIOZZO:

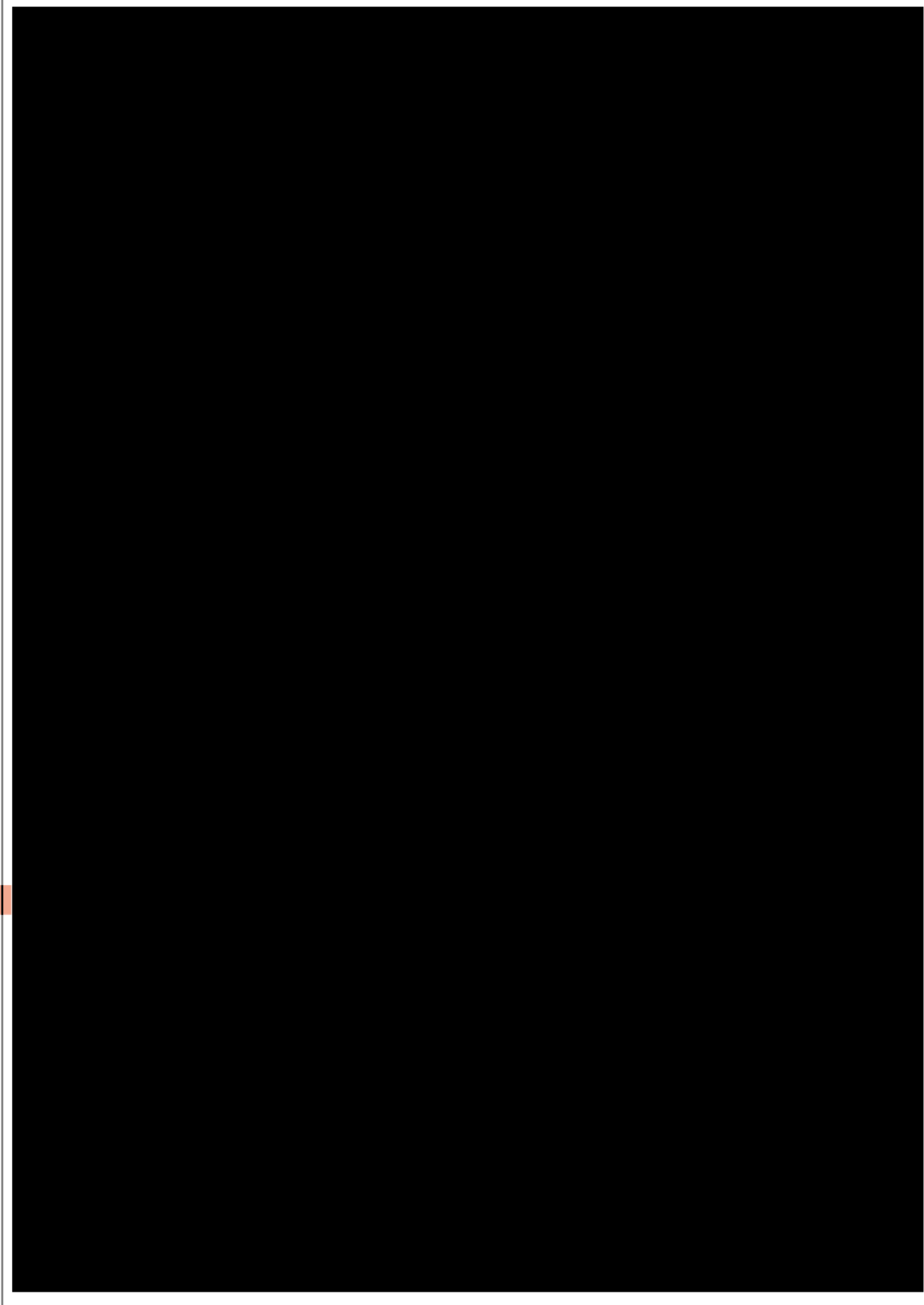
23 Q. And when we watch the playback, we can see the
24 data that the user submitted on the webform represented
25 in the replay; right?

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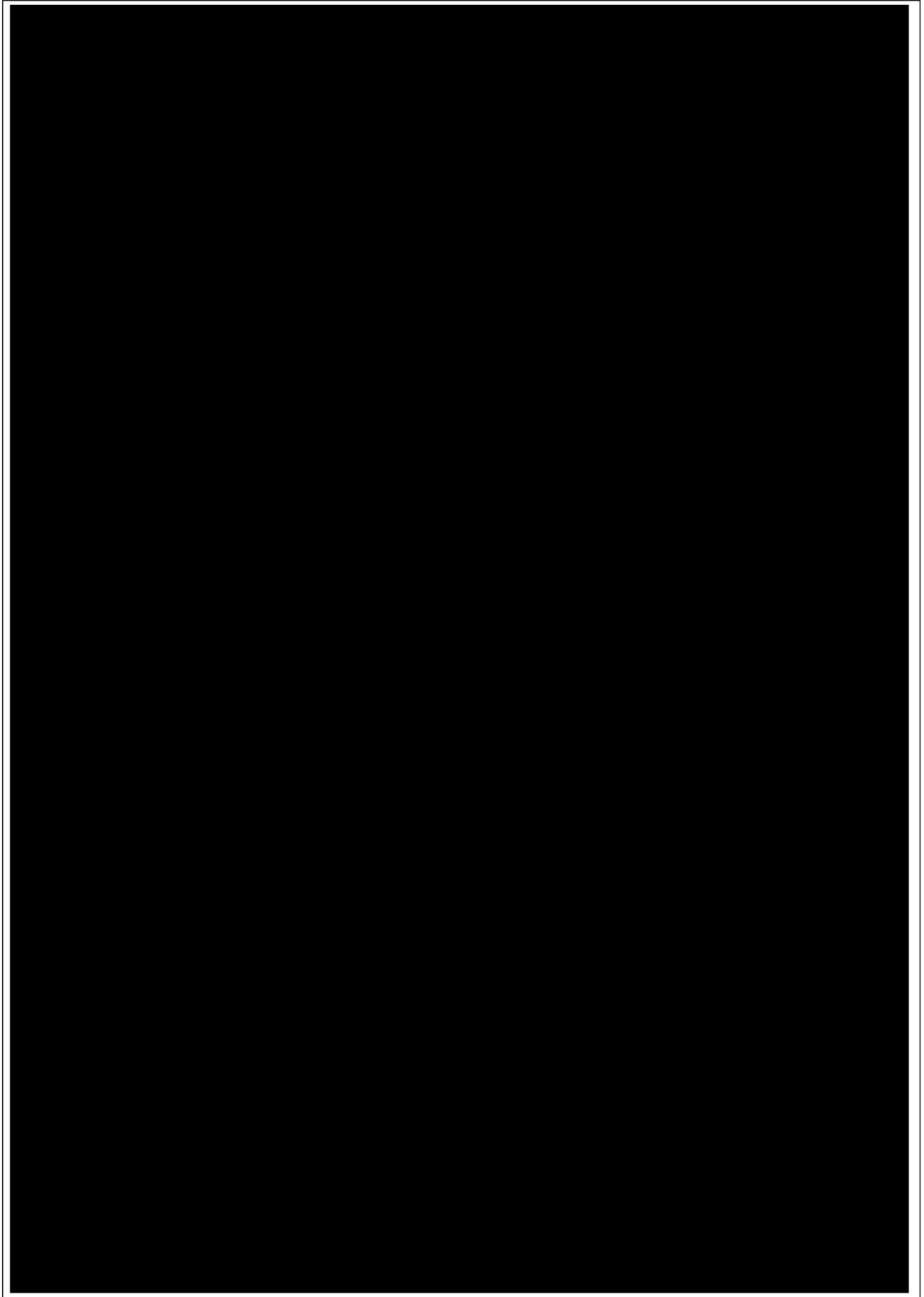


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Q. Your opinion that you offer about reading the contents of the communications, you said it's your opinion that ActiveProspect neither reads nor attempts to read; is that right?

MS. DAVIS FISHER: Objection. Vague.

BY MS. GLIOZZO:

Q. Let me pull up the report if we need to.

A. Yeah.

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1 Q. Okay. Let's pull up Exhibit 162, paragraph
2 5b(ii). Do you see that?

3 A. Yeah.

4 Q. Quote: I conclude neither TrustedForm nor
5 ActiveProspect reads or attempts to read or to learn the
6 contents or meaning of any information the user inputs.
7 Do you see that?

8 A. Yes.

9 Q. We talked about how, in your opinion, because
10 the information is bundled and encoded and encrypted it
11 can't be read; is that right?

12 MS. DAVIS FISHER: Objection. Vague and
13 misstates the witness' prior testimony.

14 THE WITNESS: Yeah, I think what I -- what I
15 said was that TrustedForm doesn't attempt to read or read
16 the contents or meaning, and that I further say, I talked
17 about what some of the difficulties would be if they
18 would be trying to do that. But my main point here is
19 that they don't do it and they don't have the current
20 capability, current technical capability to do it.

21 BY MS. GLIOZZO:

22 Q. As it is used in your report, what does it mean
23 to attempt to read the information that the user input on
24 the web forms? What is an attempt?

25 MS. DAVIS FISHER: Objection. Compound and

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1 vague.

2 THE WITNESS: So I think where I use "read" or
3 "attempt to read," what I mean is that it's not even just
4 that they're not successfully reading it, they're not
5 trying to read it. I've seen no code or evidence, and
6 I've seen, if anything, testimony to the contrary, that
7 they don't try to read the contents. They don't try to
8 put together the events into a piece of content. So I'm
9 not even making the -- so I'm trying to not require that
10 they be successful at it. They don't even try to do it.

11 BY MS. GLIOZZO:

12 Q. So as you use the word "attempt" in your
13 opinions, attempt means to try. Is that fair?

14 MS. DAVIS FISHER: Objection. Misstates the
15 witness' prior testimony.

16 THE WITNESS: Yeah, I think what I mean is that
17 TrustedForm doesn't -- doesn't try to put together the
18 meaning of what is -- of what the user is doing. They're
19 only collecting event information. So they don't even
20 try to put together the events into content.

21 BY MS. GLIOZZO:

22 Q. And let me ask you, if the POST requests or the
23 last letter typed in a webform includes everything that
24 was typed before it, if that's true, could that be
25 considered an attempt to understand what was typed into

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1 that form field?

2 MS. DAVIS FISHER: Objection. Vague.

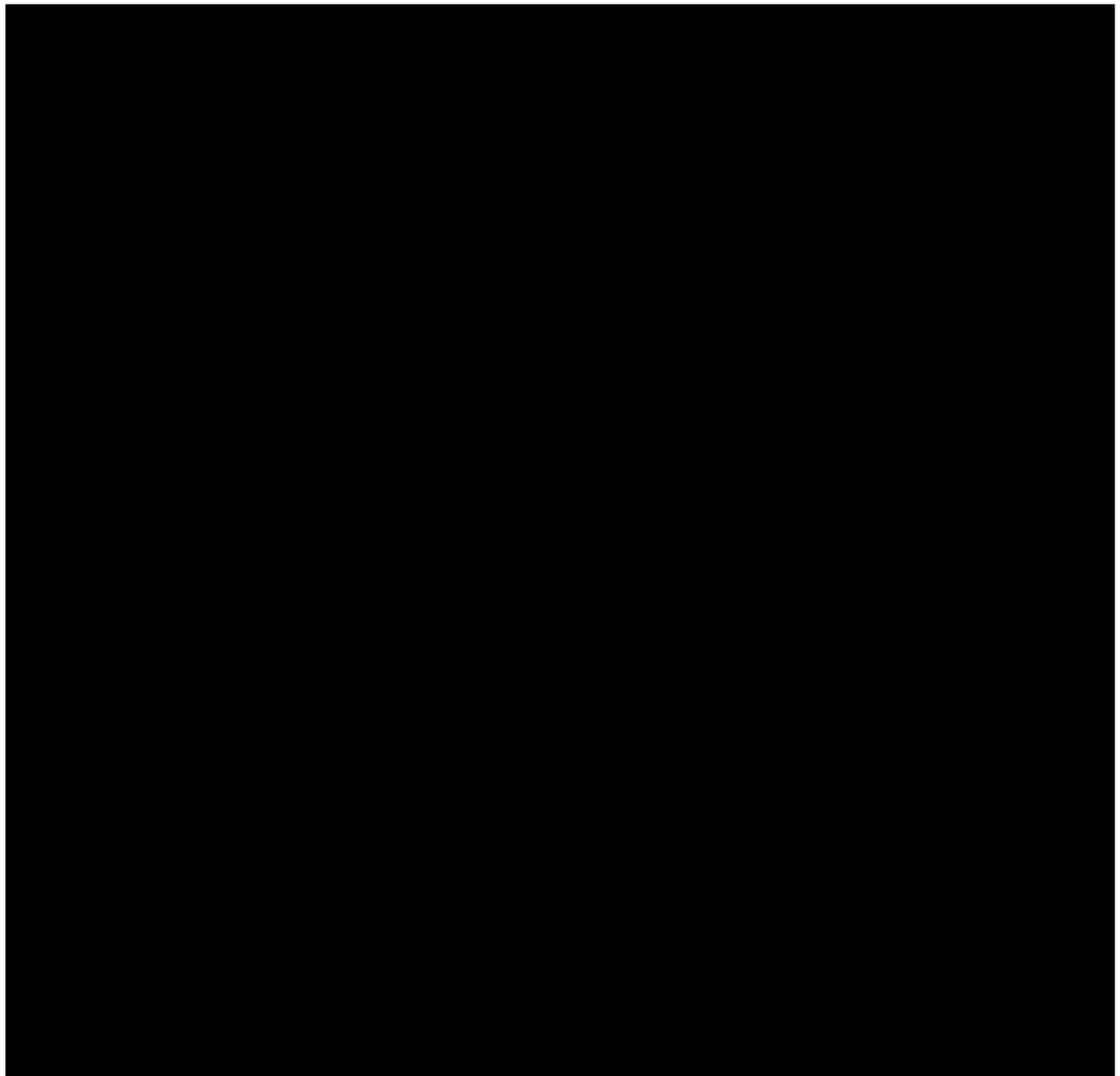
3 Incomplete hypothetical, and assumes facts not in
4 evidence.

5 THE WITNESS: No. I'll just say no and you can
6 ask a follow-up.

7 BY MS. GLIOZZO:

8 Q. Please tell me why.

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1 meanings in the contexts of particular cases, and so I
2 look to particular situations to understand what those
3 words mean and how to use them.

4 BY MS. DAVIS FISHER:

5 Q. You also testified earlier that ActiveProspect,
6 you said, does not have the certificate URL; right?

7 A. I don't remember the exact context of that.
8 It's possible. I don't remember the exact context of the
9 question.

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18 BY MS. DAVIS FISHER:

19 Q. You also testified earlier that in certain
20 circumstances it might be the case that some information
21 that would be specific to a particular visit to a
22 particular website might qualify as, quote, content or,
23 quote, data; right?

24 MS. GLIOZZO: Object to form.

25 THE WITNESS: Are you talking about in the

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1 context of the court website or the UC Davis websites?

2 BY MS. DAVIS FISHER:

3 Q. Yes.

4 A. Yeah, I remember saying something like that.

5 Q. Okay. Does content, as you use that term, mean
6 the same thing as the contents of what the user types
7 into a webform?

8 MS. GLIOZZO: Object to form.

9 THE WITNESS: No. I was referring there to some
10 particular information about the use of the website.

11 BY MS. DAVIS FISHER:

12 Q. And does data, as you use that term, mean the
13 same thing as the contents of what a user types into a
14 particular webform?

15 A. No. In general --

16 MS. GLIOZZO: Object to form.

17 THE WITNESS: No.

18 BY MS. DAVIS FISHER:

19 Q. You can answer.

20 A. Yeah. No, in general, not.

21 Q. So I guess to put it differently, is "content"
22 or "data," as you used those terms, the same thing as the
23 contents of the user's communications?

24 A. Are we talking about in the context of the
25 TrustedForm site or in the context of the UC Davis site

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1 or something like that? What's the context here?

2 BY MS. DAVIS FISHER:

3 Q. I'm just trying to understand, when you use the
4 terms "content" or "data" in the context of the UC Davis
5 and Google Analytics pages, you were talking about the
6 contents of what a user types on a page; right?

7 MS. GLIOZZO: Object to form.

8 THE WITNESS: That's right. I was talking that
9 Google Analytics could be used to provide that
10 information if you set it up that way.

11 BY MS. DAVIS FISHER:

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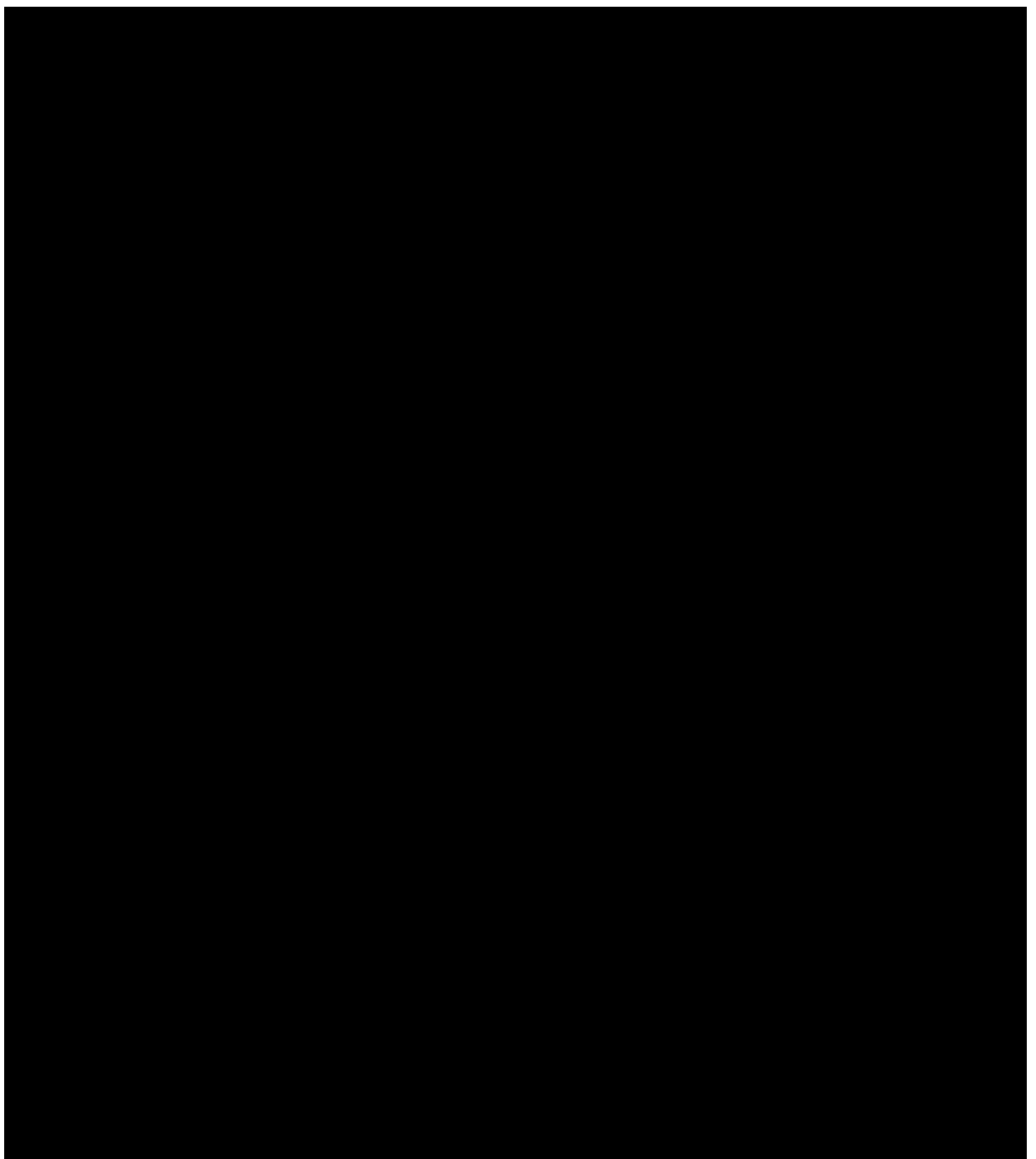
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21 Q. Dr. Polish, you also testified earlier you think
22 people are "well aware" that they're being surveilled in
23 all kinds of ways, right, just generally?

24 MS. GLIOZZO: Object to form.

25 THE WITNESS: Yes.

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1 BY MS. DAVIS FISHER:

2 Q. Okay. Would you characterize the use of
3 TrustedForm as a type of surveil?

4 A. No. I don't think of it as surveillance. I
5 think of it as, you know, it's documenting activity. I
6 think people -- I think of surveillance as sort of a more
7 general kind of thing, like having cameras on streets
8 and, you know, cameras in airports and things like that.

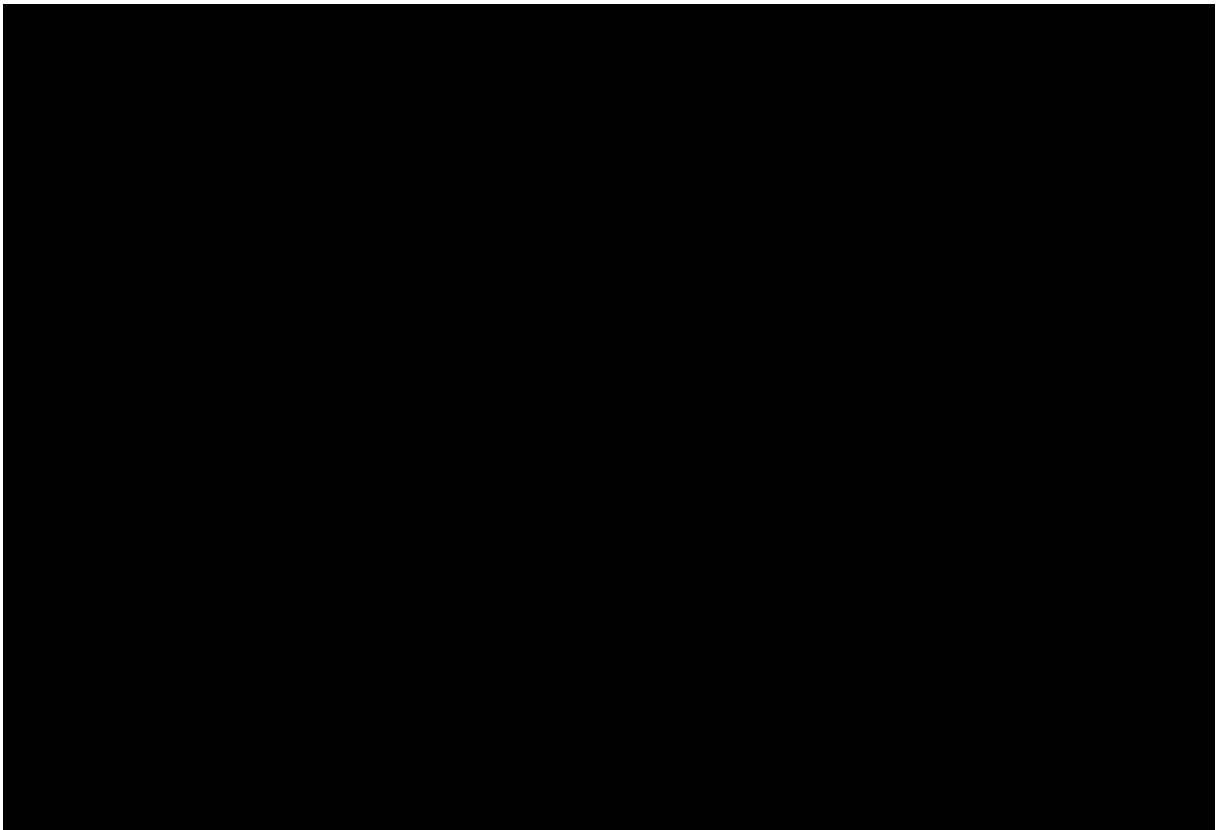
9 MS. DAVIS FISHER: No further questions. I pass
10 the witness back to you, Nina.

11 MS. GLIOZZO: A few quick follow-ups.

12 EXAMINATION

13 BY MS. GLIOZZO:

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CERTIFICATE OF REPORTER

I, MARK W. BANTA, a Certified Shorthand Reporter, licensed by the State of California, being empowered to administer oaths remotely pursuant to Section 2093(b) of the Code of Civil Procedure, do hereby certify:

That the foregoing proceedings were taken remotely before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand and thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript was requested.

IN WITNESS WHEREOF, I have this date subscribed my name.

DATED: January 13, 2025



MARK W. BANTA, CSR No. 6034